Office-Supreme Court, U.S.
FILED
MAY 23 1983
ALEXANDER L. STEVAS,
CLERK

Nos. 82-206 and 82-229

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MEMPHIS FIRE DEPARTMENT AND FIREFIGHTERS LOCAL UNION NO. 1784,
Petitioners,

v.

CARL W. STOTTS, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' SUGGESTION OF MOOTNESS

THOMAS M. DANIEL *
RICHARD B. FIELDS
COX & FIELDS
707 Adams Avenue
Memphis, Tennessee 38105
(901) 525-8601

JACK GREENBERG
O. PETER SHERWOOD
CLYDE E. MURPHY
RONALD L. ELLIS
ERIC SCHNAPPER
10 Columbus Circle
Suite 2030
New York, New York 10019
(212) 586-8397

BARRY L. GOLDSTEIN
806 15th Street, N.W.
Suite 940
Washington, D.C. 20005
(202) 638-3278

Attorneys for Respondents

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

Nos. 82-206 and 82-229

MEMPHIS FIRE DEPARTMENT AND
FIREFIGHTERS LOCAL UNION NO. 1784,
Petitioners,

v.

CARL W. STOTTS, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

RESPONDENTS' SUGGESTION OF MOOTNESS

Respondents respectfully suggest that, in light of the decision of this Court in *Boston Firefighters Union* v. *Boston Chapter, NAACP*, Nos. 82-185, 82-246, and 82-259, this case should be vacated and remanded to the Sixth Circuit with instructions to consider whether this appeal is now moot.

This case, like *Boston Firefighters*, concerns the standard to be used in selecting the public employees to be laid-off during a city fiscal crisis. But in Memphis, as in Boston, all the employees previously laid-off have since been recalled to work. (See attached News article, paragraph 4). Of the Memphis fire officers who were temporarily demoted due to the city's financial difficulties, all but one have been returned to their pre-July 1981 rank, and that officer was unaffected by the district court's injunction for he had the lowest seniority of any fireman, black or white, in the job classification of In-

spector. The City's budget for fiscal year 1984 which begins on July 1, 1983, makes provision for three (3) new inspector positions, so the fireman should be returned to his original rank.

The controversy once presented in this case has therefore become moot as a result of the reinstatement of all firemen terminated and demoted pursuant to the City's 1981 layoff policy as modified by the District Court, and as a result of the City's resumption of hiring new officers. Given the fact that the City does not anticipate layoffs or demotions in the future, there is no expectation that the circumstances giving rise to the District Court's order will occur again.

For these reasons, as with *Boston Firefighters*, this case should be vacated and remanded for determination of the mootness issue.

Respectfully submitted,

THOMAS M. DANIEL *
RICHARD B. FIELDS
COX & FIELDS
707 Adams Avenue
Memphis, Tennessee 38105
(901) 525-8601

JACK GREENBERG
O. PETER SHERWOOD
CLYDE E. MURPHY
RONALD L. ELLIS
ERIC SCHNAPPER
10 Columbus Circle
Suite 2030
New York, New York 10019
(212) 586-8397

BARRY L. GOLDSTEIN
806 15th Street, N.W.
Suite 940
Washington, D.C. 20005
(202) 638-3278

Attorneys for Respondents

* Counsel of Record

Layoff Suit Is Set Aside By Justices

By MARY DEIBEL
From The Commercial Appeal
Washington Bureau

WASHINGTON — The U.S. Supreme Court Monday sidestepped the most controversial civil rights issue before it this term by deciding not to rule if Boston could protect the jobs of newly hired minority workers when the city faced a financial bind that made layoffs necessary.

In an unsigned opinion, the justices sent the suit back to a lower court, saying the case may no longer be alive since Boston has reinstated all the veteran white police and fire fighters who had filed the complaint.

A similar lawsuit involving Memphis still is before the high court, which decided to hold Memphis until a ruling was reached in the Boston case.

Monday's action did not make it immediately clear what the court would do regarding Memphis, although Louis Britt, attorney of record for the city, said he expected the high court would decline to hear the case since all employes have been called back to work.

Like Boston, Memphis had entered into a consent agreement in federal court in the mid-1970s when municipal officials promised to improve the city's record of minority recruitment, hiring and advancement.

Both cities also set goals for themselves of bringing minority representation in their police and fire departments to a level on a par with minority participation in the local labor force.

Boston and Memphis also both ran into budgetary trouble in the early 1980s, and the layoffs those problems brought on also brought about problems with the consent agreement. Because the court orders hadn't foreseen the possibility of layoffs, judges were asked to modify their decisions to protect minority gains.

Challenges to those changes were brought in both cities by municipal employe unions, which contended the court orders were being carried out unfairly at the expense of white police and fire fighters with more seniority.

The justices, in their opinion Monday, appeared convinced by arguments in April that the Boston case was legally dead because all the officers were rehired and because a new Massachusetts law bars any future such reductions in force.

"In light of these changed circumstances," the justices said they were setting aside the First U.S. Circuit Court of Appeals ruling supporting the layoffs. The high-court opinion also ordered the case returned "for consideration of mootness."

Although all the Memphis police and fire fighters are back on the job, Tennessee has no new law comparable to Massachusetts' layoff ban. Also, Tennessee law does not recognize the right of municipal workers to organize in labor unions.

In the Boston case the unions had urged the court to decide the case even though the workers were called back because of salary and seniority losses suffered during the layoffs and because of the possible effect on future promotions.

The NAACP, which brought the first suits in 1972 in behalf of unsuccessful applicants for jobs with Boston's fire department and police force, contended the issue was dead because there will be no more layoffs in Boston.